

## The Call For Equality In Inheritance In Light Of The Sharee'ah

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**Under Islaamic Law, the woman receives half the inheritance of that of her male counterpart. However a number of 'Muslim' feminists and modernists claim that this law should be revised particularly in light of the current situation in which both men and women are working.**

This article will explain why, under Islaamic Law, the women receive half the inheritance of a man. It will then critically examine the arguments used by those who call for equality in inheritance.

The verse: **"Judgement belongs to Allaah alone"** [Al-An'aam (6):57] establishes a fundamental rule of Islaam that the prerogative of law making belongs to Allaah alone. A Muslim is obliged to obey Allaah over and above any other source of legislation. The one who refuses to judge his affairs by the laws of Allaah, believing that it is permissible to judge by other than the laws of Allaah, leaves the fold of Islaam according to the consensus of the scholars.

Hence any law that is established in the Qur'aan or the authentic Sunnah is binding upon the Muslim. By virtue of being a Muslim, he or she has no choice but to obey the laws that Allaah has laid down upon him or her. As Allaah says:

**"It is not for a believer, man or woman, when Allaah and His Messenger have decreed a matter that they should have any option in their decision." And whoever disobeys Allaah and His Messenger, he has indeed strayed in a plain error."** [Al-Ahzaab (33):36]

Hence the reason why a woman receives half the inheritance of her male counterpart *is that Allaah has legislated this in the Qur'aan*. The evidence is the verse: **"Allaah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females.."** [An-Nisaa' (4):11]. This verse is *qat'ee dalaalah* (definitive in meaning), i.e. it is a verse that has a single meaning and has no room for another interpretation.

Once we have fully accepted the rule that the woman inherits half that of the man, *then* it is permissible for us to look into the wisdom behind this ruling. The laws of Allaah are fully in harmony with sound reason; hence in many cases we can use our reason to discern the wisdom behind the laws. This rule does not apply to the laws regulating ritual worship.

To understand the wisdom behind the woman receiving less inheritance, we need first to understand the rights and duties of men and women in Islaam in the economic sphere. The laws of inheritance must be examined in this context, and not in isolation.

The man is responsible for providing for himself, his children, his wife, his parents and his unmarried sisters. So from the share of the man's inheritance, a number of female relatives have a right over this wealth. However, in the case of a woman who inherits, she need not spend it on anyone; in fact she has a right to be financially maintained by one of her male relatives. Hence due to the additional obligations placed on the man, Allaah has given him a larger share of

the inheritance. This is based upon the Sharee'ah principle: *benefits are in accordance with the scale of responsibility*.

One of the advocates of revising the laws of inheritance is Michael Mumisa. He brings the principle that 'the hukm is attached to the 'illah.<sup>1</sup> If the 'illah no longer exists, the hukm ceases to exist'. Hence if the 'illah for women receiving less inheritance ceases to exist, then so does the law. (Mumisa, 2002: 104).

Mumisa's argument is based upon his interpretation of 'Umar's decision not to give zakaat to the category of people called 'al-mu'allafat qulubuhu' (those whose hearts are to be reconciled to Islaam). He claims that the 'illah of giving zakaat to this category of people was to win their moral support and hence strengthen Islaam. Given that this 'illah no longer existed, the hukm of the 'illah was also abolished. Mumisa claims that this principle applies to all laws including inheritance law (Mumisa, 2002: 104-5).

Based upon the principle postulated by Mumisa, some may argue that when the law of inheritance was revealed, it was the case that men bore the financial responsibility; hence the law was relevant to that time. In today's society, the financial burden is often borne equally by both men and women. Given that the 'illah of the law is no longer present, the law regarding inheritance should be revised to take this new situation into account.

However, the argument of Mumisa is seriously flawed. He has incorrectly associated a valid principle, with the narration regarding 'Umar. Second, although the principle is correct, he has misunderstood it and hence applied it to cases that are not covered by it. The logical conclusion of his misunderstanding is the abrogation of many rules of the sharee'ah. Thirdly he has confused 'illah with hikmah. We will take each point in turn.

Firstly, 'Umar chose not to give zakaat for al-mu'allafah quloobuhum (those whose hearts are to be reconciled to Islaam), as he judged that such a category of people did not exist at that particular time. This did not preclude zakaat being given to this category at a later time. Hence 'Umar's decision was based upon the non existence of a category of zakaat recipients and not the absence of the 'illah. To further illustrate this point we can look at the example of travellers (in need) who are entitled to zakaat. However, if travellers in need cannot be found, it does not mean the hukm of zakaat to travellers is no longer present or valid, rather this category of zakaat recipients do not exist at this moment in time. Hence Mumisa is wrong to associate the example of 'Umar with the principle that if the 'illah of the hukm is not present, the hukm is not present.

If one attributes a ruling to certain reasons, and those reasons cease to exist, that is not sufficient proof to negate the ruling, since a ruling does not require the continuous presence of its reason. Thus there is always need for proof to indicate that a ruling is waived, even when the reason does not exist anymore.

Secondly, his application of this principle to the division of inheritance would entail the abrogation of the laws of inheritance. Scholars unanimously agree that abrogation of a verse of the Qur'aan could only have taken place within the life time of the Prophet. Secondly, the abrogating text must be another verse or an authentic ḥadīth and not ijmaa', qiyaas or maslaḥah. Hence there is always need for proof to indicate that a ruling is waived and this proof is only found in *nusoos* (textual evidence).

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<sup>1</sup> the underlying cause of the hukm (ruling)

Thirdly, Mumisa has confused the 'illah of a hukm, with the hikmah behind the hukm. The 'illah is as an attribute that is constant and evident, and bears a proper relationship to the hukm. The hikmah on the other hand is not a constant attribute. For example, the hikmah behind breaking the fast due to a journey is hardship, whereas the 'illah is the journey itself. But a journey may or may not result in hardship, i.e. the hikmah may or may not arise, and hence is not constant, unlike the 'illah. The jumhoor hold that the presence of the 'illah entails the presence of the hukm, even if the hikmah is not present, and the hukm is absent in the absence of the 'illah even if the hikmah is present.

Now in the case of inheritance, the hikmah behind the woman receiving less than that of a man is due to the man having additional financial responsibilities. The hukm does not depend on this hikmah. If a man died, the 'illah of his daughter receiving half that of his son, *is the death of the father*. This is different from the hikmah, which has been explained above.

In today's society, it is true that the hikmah behind the division of inheritance is not always present, as women are sometimes the breadwinners. If we were to accept for the sake of argument that the ruling should change due to the absence of the hikmah (even though this argument has no basis in the sharee'ah) there would still be a problem. There may be many cases where the hikmah still does apply (i.e. the husband is the sole breadwinner, not the wife), in this case would we revert back to the original law? If not, this would be unfair on the man. And if yes, how would we practically revert back to the original law given that the husband and wife inherit from entirely different families. Alternatively we could judge it on a case by case basis. In this case the ruling would vary from family to family, and would lead to endless disputes. What if one daughter is working and is contributing towards the maintenance of her household, and the other daughter remains at home and is supported entirely by the husband? Should the working daughter in this case get double the inheritance of the non-working daughter, and if not, what is the wisdom behind them receiving the same share when the former has financial responsibilities which the latter does not have. Equalising the shares of inheritance would oppose the sharee'ah and would lead to further injustices and chaos.

In conclusion, the rulings of ibaadaat and the sharee'ah are fixed and cannot be changed for considerations of public interest.<sup>2</sup> Hence there is no sharee'ah basis for reconsidering the laws of inheritance.

## Bibliography

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<sup>2</sup> Every ruling in the Shar'iah is for the benefit of creation as stated in the legal maxim: *The Lawgiver orders only that which is a purely beneficial or predominately beneficial*. Allaah informs us in His Noble Book: **"Verily, Allaah enjoins justice and goodness, and giving (help) to kith and kin and forbids shameful, indecent and evil deeds, and all kinds of oppression. He admonishes you, that you may take heed."** [Surah an-Nahl (16):90]

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